EDITOR'S NOTE:

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90-1209 (2)

NO.

Supreme Court, U.S.
FILED
JAN 2 1991
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF
THE UNITED STATES

JOYCE BALZER, PRO SE PETITIONER

V

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC. AND ROBERT H. FRIEL

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT

Appeal from the Illinois Supreme Court

"Appendix A"

Joyce Balzer, Pro se
1302 Coolidge Place
Rockford, Illinois
61107

IN THE CIRCUIT COURT OF THE 17TH CIRCUIT
COUNTY OF BOONE, ILLINOIS

ROBERT BALZER AND JOYCE BALZER,	)	No. 84L43
Plaintiffs,	)	
v	)	
DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL	)	
Defendants,	)	

JUDGMENT ORDER

This matter came on for hearing on May 19, 1989, in connection with the Motion for Reconsideration of Motion for Summary Judgment filed on behalf of the defendantdefendants, Donald Meier, James book, and K-B Farms, Inc., which motion was joined in by the other defendant, Robert H. Friel, and all the parties, including the plaintiffs, Robert Balzer and Joyce Balzer ("the Balzers"), were represented by their respective counsel. Upon consideration of the record and the arguments of counsel, the Court made and hereby confirms the following findings and determinations:

1. There is no genuine issue of material fact as to whether or not the Balzers consented to the alleged trespass upon their property and the

rechannelization of Beaver Creek because it is clear as a matter of law that the Balzers, through the actions of Robert Balzer, a joint tenant in possession and control of the property, gave the defendants their apparent consent for the rechannelization of the creek in that:

(a) The appropriate standard is set forth in Restatement of Torts Second, Section 892(2), which states:

If words or conduct are reasonably understood by another to be intended as consent, they constitute apparent consent and are effective as consent in fact;

(b) Robert Balzer admits that he purposely left the defendants with the impression that he had no objection to the project except for its possible cost to himself and that he knew that the defendants were making plans to proceed with the project at a meeting to which he was invited to attend and that, knowing of such planning meeting, he neither registered any objecion to the project proceeding nor attended the meeting to express

curiosity about the plans; and

(c) Regardless of whether or not Robert Balzer intended to give actual consent, it is undisputed that his words and conduct gave apparent consent and that he purposely left his neighbors, the defendants, with the impression that he had consented to the channelization, which was also the undisputed understanding and impression of his wife, Joyce Balzer, for nearly two years after the project was finished.

2. There is no genuine issue of material fact as to whether or not the Balzers sustained any damages because it is undisputed that the Balzers suffered no monetary loss or damages as a result of the creek rechannelization in that:

(a) The Balzers' property was not diminshed in value;

(b) The Balzers lost no tillabile acreage as a result of the creek rechannelization and in fact have increased the total crop land on their property since the rechannelization;

(c) It is undisputed that the defendants

requested permission from Joyce Balzer for the defendants' workers to come onto the Balzer property at the only location where it had been diverted from that property in accordance with the after-the-fact permit issued by the Army Corps of Engineers authorizing the defendants to perform that restoration work on Beaver Creek, but Joyce Balzer refused such permission; and

(d) It is undisputed that the Balzers have failed to mitigate their claimed damages as a matter of law because the only reason that the creek has not be redirected back onto the Balzer's refused to permit the creek to be restored back to its original condition on their property.

Pursuant to the above findings and determinations and in accordance with the Court's oral ruling on May 19, 1989, the Court hereby grants summary judgment in favor of the defendants, donald Meier, James Book, K-B Farms, Inc., and Robert H. Friel, and against the plaintiffs, robert Balzer and Joyce Balzer, as to all claims and issues. This is a final order, and there is no

just reason for delaying enforcement or appeal.

Entered:

Date: 6/23/89 K. Craig Peterson,

Filed 6/23/89

Associate Judge

Prepared and Approved By:
Michael F. O'Brien
Clark, McGreevy & Johnson, P.C.
850 North Church Street
Rockford, IL 61105-1201
(815) 963-8451
Attorney for Defendants
Meier, Book & K-B Farms

Read and Approved as to Form By
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Clark, Nelson & Newton
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(815) 964-8800
Attorney for Plaintiffs

Read and Approved as to Form By:
G. Michael Scheurich
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Suite 400
202 West State Street
Rockford, IL 61101
(815) 965-8775
Attorney for Defendant Friel

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF BOONE, ILLINOIS

ROBERT BALZER and JOYCE BALZER, Plaintiffs,	)	
v.	)	84 L 43
DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL, DEFENDANTS.	)	O R D E R

This matter came on for hearing on August 3, 1989, in connection with the Motion for Rehearing of Reconsideration of Motion for Summary Judgment filed on behalf of the plaintiffs, Robert Balzer and Joyce Balzer ("the Balzers"). Upon consideration of the record and the arguments of the parties, the Court hereby denies such Motion in all respects and confirms its Judgment Order of June 23, 1989, granting summary judgment for the defendants. The Court denies the defendants' Motion for Sanctions pursuant to Section 2-611.

This is a final order, and there is no just reason for delaying enforcement or appeal.

Entered:

Date: 8/7/89

K. Craig Peterson,
Associate Judge

Filed 8/11/89

APPEAL TO THE ILLINOIS APPELLATE COURT, SECOND DISTRICT

FROM THE CIRCUIT COURT OF BOONE

ROBERT BALZER AND JOYCE BALZER

PLAINTIFFS-APPELLANTS)
VS.)
DONALD MEIER, JAMES BOOK,) 84 L 43
K-B FARMS, INC., AND)
ROBERT H. FRIEL)
)
DEFENDANTS-APPELLEES)

NOTICE OF APPEAL

Plaintiffs-Appellants Robert and Joyce Balzer, pro se, hereby appeal to the Illinois Appellate Court for the Second District from the following orders entered in this matter in the Circuit Court of Boone County:

1. The section of the order of August 3, 1989, pertaining to dismissal of case in response to Motion for Rehearing of Reconsideration of Motion for Summary Judgment.

2. The order of May 19, 1989, granting Defendants' Reconsideration of Motion for Summary judgment, contradicting original order of denying defendants summary judgment.

By this appeal, Plaintiffs-Appellants will ask the Appellate Court to uphold the original Judgment

Order of May 17, 1988, assign this case to an impartial circuit, reinstate all Counts of the Complaint as set forth in the Motion for Rehearing, proceed with a trial on the merits as to all claims, or for such other and further relief as the Appellate Court may deem appropriate to grant.

Robert and Joyce Balzer
Joyce Balzer 8-31-89
1302 Coolidge Place
Rockford, Illinois 61107
(815) 399-6831

Filed 8/31/89

APPEAL TO THE ILLINOIS APPELLATE COURT, SECOND DISTRICT FROM THE CIRCUIT COURT OF BOONE

ROBERT BALZER AND JOYCE BALZER	)	
	)	
PLAINTIFFS-APPELLANTS	)	
	)	
VS.	)	84 L 43
DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL	)	
	)	
DEFENDANTS-APPELLEES	)	

AMENDED DOCKETING STATEMENT

The docketing statement heretofore filed in this appeal is hereby amended in the following respect:

Issues Proposed To Be Raised:

1. That the evidence presented at the trial pertaining to the plaintiff's consent was insufficient as a matter of law.

2. That any possible consent attributed to the plaintiff upon which defendants acted violated the Statute of Frauds.

3. That defendants' second Motion for Summary Judgment out not to have been before the court since their first motion for summary judgment was

ruled in favor of the plaintiffs and a whole year elapsed before they acted.

Joyce Balzer

Joyce Balzer

Robert Balzer

Filed 8/31/89

STATE OF ILLINOIIS APPELLATE COURT SECOND DISTRICT

OFFICE OF THE CLERK
708/695-3750

APPELLATE COURT BUILDING
ELGIN, ILLINOIS
60120-5558

05/03/90
THE COURT HAS THIS DAY ENTERED THE FOLLOWING ORDER
IN THE CASE OF:
Gen. No. 2-89-0898

Title: Robert & Joyce Balzer, ATs/X-AEs
v. Donald Meier, James Book,
K-B Farms, Inc. & Robert H. Friel,
AEs/X-ATs.

The judgment of the Circuit Court of Boone County
is affirmed

(See attached order.)

LOREN J. STROTZ, Clerk

cc: Robert Balzer
Clark, McGreevy & Johnson, P.C.
Michael F. O'Brien
G. Michael Scheurich
Guyer & Enichen

No. 2-89-0898

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ROBERT BALZER and JOYCE BALZER Plaintiffs-Appellants, DONALD MEIER, JAMES BOOK, K-B FARMS, INS., AND ROBERT H. FRIEL Defendants-Appellees	) Appeal) from) Winnebago Circuit))) No. 84 L 43) Hon. Craig Peterson))))))))

ORDER

Plaintiffs, Robert and Joyce Balzer, appeal from the circuit court's order granting summary judgment for the defendants, Donald Meier, James Book, K-B Farms, Inc., and Robert Friel. The plaintiffs contend on appeal that the court erred by reconsidering its earlier denial of a motion for summary judgment and by granting the motion for

summary judgment on reconsideration. The defendants filed a cross-appeal contending that the court erred in denying their motion for sanctions pursuant to section 2-611 of the Illinois Code of Civil Procedure. Ill. Rev. Stat. 1987, ch. 110, par. 2-611.

Plaintiffs filed a one-count amended complaint alleging damages resulting from the defendants' trespass onto plaintiffs' property. Plaintiffs alleged that the defendants entered upon their property and redirected Beaver creek, a navigable stream, off of their property. Plaintiffs alleged that this was done without their consent and caused them injury. Plaintiffs sought in excess of $100,000 in damages.

Defendants filed a motion for summary judgment which the court denied on August 28, 1987. On February 4, 1988, the defendants filed a second motion for summary judgment relying on deposition testimony of both plaintiffs. On May 13, 1988, the court again denied defendants' motion for summary judgment stating, "If counsel can imagine the

thickness of a human hair, that is the margin by which the motion is denied."

On May 8, 1989, defendants filed a motion to reconsider the denial of their motion for summary judgment. On June 23, 1989, the court granted summary judgment in favor of the defendants. The court stated that "it is clear as a matter of law that the Balzers*** gave the defendants their apparent consent for the rechannelization of the creek." Additionally, the court found that, "There is no genuine issue of material fact as to whether or not the Balzers sustained any damages because it is undisputed that the Balzers suffered no monetary loss or damage as a result of the creek rechannelization." Furthermore, the court stated that, "It is undisputed that the Balzers have failed to mitigate their claimed damages as a matter of law because the only reason that the creek has not been redirected back onto the Balzer property is that the Balzers refused to permit the creek to be restored back to its original condition on their property."

Defendants filed a motion for sanctions pursuant to section 2-611 and the plaintiffs filed a motion for reconsideration of the grant of summary judgment. The court did not conduct a hearing on defendants' motion for sanctions. The court denied both motions on August 11, 1989. Plaintiffs timely filed a notice of appeal from this order, and the defendants cross-appealed from the denial of their motion for sanctions.

Defendants have filed with this court a motion to dismiss plailntiffs' appeal, and we have ordered that it be addressed with the case. Defendants claim that plaintiffs' statement of facts dooes not conform to Supreme court Rule 341 (107 Ill. 2d R.341), and plaintiffs repeately refer to matters not in the record. While we wholeheartedly agree that the plaintiffs' statement of facts is inadequate, we find that dismissal of plaintiffs' appeal would be too harsh a sanction. We do admonish plaintiffs that pro se litigants are required to comply with the same rules of procedure required of attorneys. (In re J. M. (1988), 170

Ill. App. 3d 552, 556.) We also agree that the brief refers to matters not contained in the record. We shall consider only those matters properly presented and contained in the record. See Brazinski v. Transport Service Co. (1987), 159 Ill. App. 3d 1061, 1069.

Defendants next contend that Robert Balzer's appeal should be dismissed because the notice of appeal filed on his behalf is signed by Joyce, a nonattorney. A nonattorney can appear only on his own behalf and there is no exception when a husband and wife relationship exists. (See Chicago v. Witvoet (1973), 12 Ill. App. 3d 654, 655-56.) Therefore, Robert Balzer's appeal is dismissed.

We now consider the claims of plaintiff, Joyce Balzer. Plaintiff first contends that the court erred by reconsidering its denial of summary judgment more than 30 days after the order was entered. Plaintiff contends that section 2-1203 applies and bars this action by the court. This argument is without merit.

Section 2-1203 pertains to motions filed

"after judgment." (Ill. Rev. Stat. 1987, ch. 110, par. 2-1203.) The denial of a motion for summary judgment is an interlocutory order that is not final or appeal able. (Cedric Sprints & Associates, Inc. v. N.E.I. Corp. (1980), 81 Ill. App. 3d 1031, 1032.) An interlocutory order can be reviewed at any time prior to final judgment. (Catlett v. Novak (1987), 116 Ill. 2d 63, 68.) The court did not err by reconsidering the denial of defendants' motion for summary judgment.

Plaintiff's next contention is that the court erred in granting summary judgment in favor of defendants. Plaintiff argues that the issue of consent is factual and, therefore, summary judgment on this point was inappropriate.

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Ill. Rev. Stat. 1987, ch. 110, par. 2-1005(c); se also Purtill v. Hess (1986), 111 Ill.

2d 229, 240; Steiner v. Marr (1988), 171 Ill. App. 3d 366, 369.) While summary judgment is an efficient and expeditious manner in which to dispose of a lawsuit, it should not be granted unless, when construing the evidence strongly against the moving party, the movant clearly and without doubt is entitled to such relief. Steiner, 171 Ill. App. 3d at 369.

In construing the evidence in the light most favorable to the plaintiffs, there is no doubt that the plaintiffs gave their consent for the work performed on Beaver Creek. Taking into consideration the numerous admissions made by both Robert and Joyce in their depositions and the request to admit facts, it is clear that, while they may not have intended to, they gave their consent for the work to be performed. Robert Balzer admitted that he left the defendants with the impression that his only concern with the work was the possible cost to him.

The Balzers now contend an issue of material fact exists regarding consent. Simply alleging an

issue of material fact exists does not create such an issue. (Peltz v. Chicago Transit Authority (1975), 31 Ill. App. 3d 948, 951.) If no reasonable person could draw different inferences from the facts, there is no triable issue and summary judgment should be granted. (Lumbermans Mutual Casualty Co. v. Pths (1968), 104 Ill. App. 2d 80, 88.) We find from the evidence presneted that no reasonable person could determine that the Balzers did not consent to the work performed. We find that the court did not err in granting summary judgment to the defendants. Due to the resolution of this issue, it is unnecessary to discuss the issue of lack of or failure to mitigate damages.

The final issue is raised by the defendants in their cross-appeal. Defendants claim that the court erred by denying their request for sanctions without a hearing.

This court will not disturb a trial court's determination regarding the assessment of attorney fees unless there is a clear showing of abuse of discretion. (Beno v. McNew (1989), 186 Ill. App.

3d 359, 365.) Whether a hearing on the petition is required depends on the circumstances of the case. (Beno, 186 Ill. App. 3d at 365-66.) This court has held that a section 2-611 petition "must specifically state which statements or pleadings were falsely made and must further specify what fees resulted from such false statements or pleadings." Brandel Realty Co. v. Olson (1987), 159 Ill. App. 3d 230, 236; se also Launius v. Najman (1984), 129 Ill. App. 3d 498, 505.

While defendants" petition in this case sets forth the allegedly false statements made, it fails to specifically set forth what fees resulted from these false statements. Due to this failure, the trial court did not err in denying defendants' petition for fees without a hearing.

The appeal by Robert Balzer is dismissed, and the decision of the circuit court of Winnebago County is affirmed.

Affirmed.

McLaren, J., with Geiger and Inglis, JJ., concurring.

NO. 2-89-0898
APPEAL TO THE ILLINOIS APPELLATE COURT,
SECOND DISTRICT
FROM THE CIRCUIT COURT OF BOONE

ROBERT BALZER AND JOYCE BALZER)
)
PLAINTIFFS-APPELLANTS)
)
VS.) 84 L
43
DONALD MEIER, JAMES BOOK,)
K-B FARMS, INC., AND)
ROBERT H. FRIEL)
)
DEFENDANTS-APPELLEES)

AFFIDAVIT OF INTENT TO
PETITION FOR LEAVE TO APPEAL

Plaintiff-Appellant Joyce Balzer, appearing pro se, on oath states that she intends to file with the Supreme Court of Illinois a Petition for Leave to Appeal from the decision of the Illinois Appellate Court, Second District, filed in the captioned matter on May 3, 1990.

Respectfully submitted,

Joyce Balzer

Joyce Balzer

Plaintiff-Appellant Pro se

Filed 5/23/90

phone, at least the heart would not have been torn out of the farm."

Joyce Balzer

JOYCE BALZER ET AL, PLAINTIFFS

NOTICE OF FILING

To: Michael J. O'Brien
Clark, McGreevy & Johnson, P.C.
850 North Church Street
Rockford, Il 61105-1201

G. Michael Scheurich
Guyer & Enichen
Suite 400
202 West State Street
Rockford, Il 61101

Please be advised that on the 2nd day of August, 1989, we filed with the Circuit Clerk of the 17th Judicial Circuit, Boone County, Illinois, a Motion

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
(217) 782-2035
October 3, 1990

MS. JOYCE BALZER
1302 COOLIDGE PLACE
ROCKFORD, IL 61107

NO. 70317 - Robert Balzer, et al. (Joyce Balzer, petitioner, v. donald Meier, et al., respondents). Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 25, 1990.

NO. 70317

IN THE ILLINOIS SUPREME COURT
FROM THE SECOND JUDICIAL DISTRICT
NO. 2-89-0898

JOYCE BALZER	)	
	)	Appeal from
the Circuit Court	)	of Boone
County		
PLAINTIFF-APPELLANT	)	
	)	
VS.	)	CIRCUIT COURT
NO. 84 L 43	)	
DONALD MEIER, JAMES BOOK,	)	
K-B FARMS, INC., AND	)	
ROBERT H. FRIEL	)	TRIAL JUDGE:
JUDGE CRAIG PETERSON	)	
DEFENDANTS-APPELLEES	)	
	)	

MOTION FOR STAY OF JUDGMENT

Joyce Balzer, plaintiff pro se, respectfully presents this application for and moves this Court to enter an order staying the issuance of mandate of the judgment rendered on October 3, 1990, in the above-entitled cause for a reasonaable period of time. This motion is made under the provisions of Section 2101 (f), Title 28, United States Code, to enable plaintiff to apply for and obtain a writ of

certiorari from the Supreme court of the United States.

October 22, 1990.

Respectfully submitted,

Joyce Balzer

Joyce Balzer
Plaintiff pro se

Joyce Balzer
1302 Coolidge Pl.
Rockford, IL 61107

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
(217) 782-2035
October 29, 1990

Ms. Joyce Balzer
1302 Coolidge Place
Rockford, IL 61107

In re: Robert Balzer, et al. (Joyce Balzer, petitioner, v. Donald Meier, et al., respondents).
No 70317

Dear Ms. Balzer:

Enclosed please find a copy of an order entered today by the Illilnois Supreme Court in the above entitled cause.

Very truly yours,

Juleann Hornyak

Clerk of the Supreme Court

JH: lgr
cc: Mr. Michael G. Schuerich
Mr. Michael F. O'Brien
Chief Justice Moran

IN THE
SUPREME COURT OF ILLINOIS

re: Joyce Balzer
v.
Donald Meier, James Book, K-B Farms, Inc. and Robert H. Friel

ORDER

This matter has come for consideration upon the motion Joyce Balzer to stay the mandate of this Court pending appeal or application for certiorari in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for certiorari or the expiration of the period within which said application or notice may be filed. if certiorari is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such fililng being made by affidavit filed with the clerk of this Court, be further stayed pending resolution by the United States Supreme Court of such application of appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or certiorari may be sought. Filed 10/29/90.

NO. 70317
IN THE ILLINOIS SUPREME COURT
FROM THE SECOND JUDICIAL DISTRICT
NO. 2-89-0898

of Boone County

JOYCE BALZER

PLAINTIFF-APPELLANT

)
)
DONALD MEIER, JAMES BOOK,)
K-B FARMS, INC., AND)
ROBERT H. FRIEL)
)
DEFENDANTS-APPELLEES)
)

MOTION TO STAY MANDATE
TO THE APPELLATE COURT

Plaintiff Pro Se, Joyce Balzer, requests that the mandate in the above captioned case be stayed as application for certiorari in the United States Supreme Court has been made.

Respectfully submitted,

Joyce Balzer

Joyce Balzer
Plaintiff pro se
1302 Coolidge Pl.
Rockford, IL 61107
1/2/91

NO. 70317

IN THE ILLINOIS SUPREME COURT
FROM THE SECOND
JUDICIAL DISTRICT
NO. 2-89-0898

JOYCE BALZER	)	
	)	Appeal from
the Circuit Court	)	
	)	of Boone
County		
PLAINTIFF-APPELLANT	)	
	)	
VS.	)	NO. 84 L 43
	)	
DONALD MEIER, JAMES BOOK,	)	
K-B FARMS, INC., AND	)	
ROBERT H. FRIEL	)	TRIAL JUDGE:
JUDGE CRAIG PETERSON		
	)	
DEFENDANTS-APPELLEES	)	
	)	

AFFIDAVIT OF WRIT FILED

ON THE 2ND DAY OF JANUARY, 1991, Plaintiff pro se, Joyce Balzer, hereby made application for Writ of Certiorari to the United States Supreme Court in the above entitled cause.

Respectfully submitted,

Joyce Balzer

Joyce Balzer
Plaintiff pro se

IN THE SUPREME COURT OF
THE UNITED STATES
January Term, 1991
No._____

JOYCE BALZER, PRO SE PETITIONER

V

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC. AND ROBERT H. FRIEL

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT

Appeal from the Illinois Supreme Court

"Appendix B"
(Exhibits)

Joyce Balzer, Pro se
1302 Coolidge Place
Rockford, Illinois
61107

Brad Burt/The Register Star

Joyce Batzer and her children picket the Winnebago County Courthouse Tuesday morning to protest the rechanneling of a Boone County creek

Mother pickets for justice

Six kids, mom march to reclaim stolen creek

By Joe Lamb

The Register Star

A woman who said she is fed up with the legal system and government agencies after fighting eight years to reclaim a stolen creek armed her kids with picket signs and took to the streets Tuesday.

"We have not had contact with our own lawyer for over a year," complained an angry Joyce Balzer as she and six of her children marched in front of the Winnebago County Courthouse with picket signs demanding "Justice for the Small Fry."

Balzer said her family is protesting lack of action in Boone County courts on a lawsuit pending since 1984 and involving a rechanneling of Beaver Creek near Poplar Grove.

Balzer's Rockford attorney, John Newton, said he hadn't "heard from her in about eight months, and as a matter of fact, I've sent her several letters that she hasn't answered. It may be just a failure of communication. The letters haven't come back, but maybe her mail got misplaced."

Balzer, a social worker assigned to Muldoon Center in the Rockford school system, said she and her husband, Robert, own property along the meandering creek, which was straightened and rechanneled by neighboring landowners in the late 1970s.

She said the work damaged her property and was done without a proper permit from the state. The Balzers filed suit in U.S. District Court in 1982, but their complaint was dismissed in 1984, apparently after the state granted an after-the-fact permit. The Balzers then filed suit in Boone County.

Balzer said she recently checked on the status of the lawsuit and was told that it was in danger of being dismissed for inactivity. The Boone County circuit clerk's office confirmed that the lawsuit was on a recent "slaughter call" but was continued at the request of an attorney standing in for Newton.

"We're picketing the courthouse here (in Rockford) because this is part of the 17th Judicial Circuit, and somehow we've got to get justice," Balzer said. "If you've got deep pockets, you can fight this sort of thing, but not if you re a family with eight kids."

Balzer was joined in her street protest by children Shari, 17; Mari, 16; Teresa, 14; Sandi, 12; Kim, 11; and Steven, 5. Two other sons, John, 9, and David, 8, were to join the picket line later.

Exhibit 2

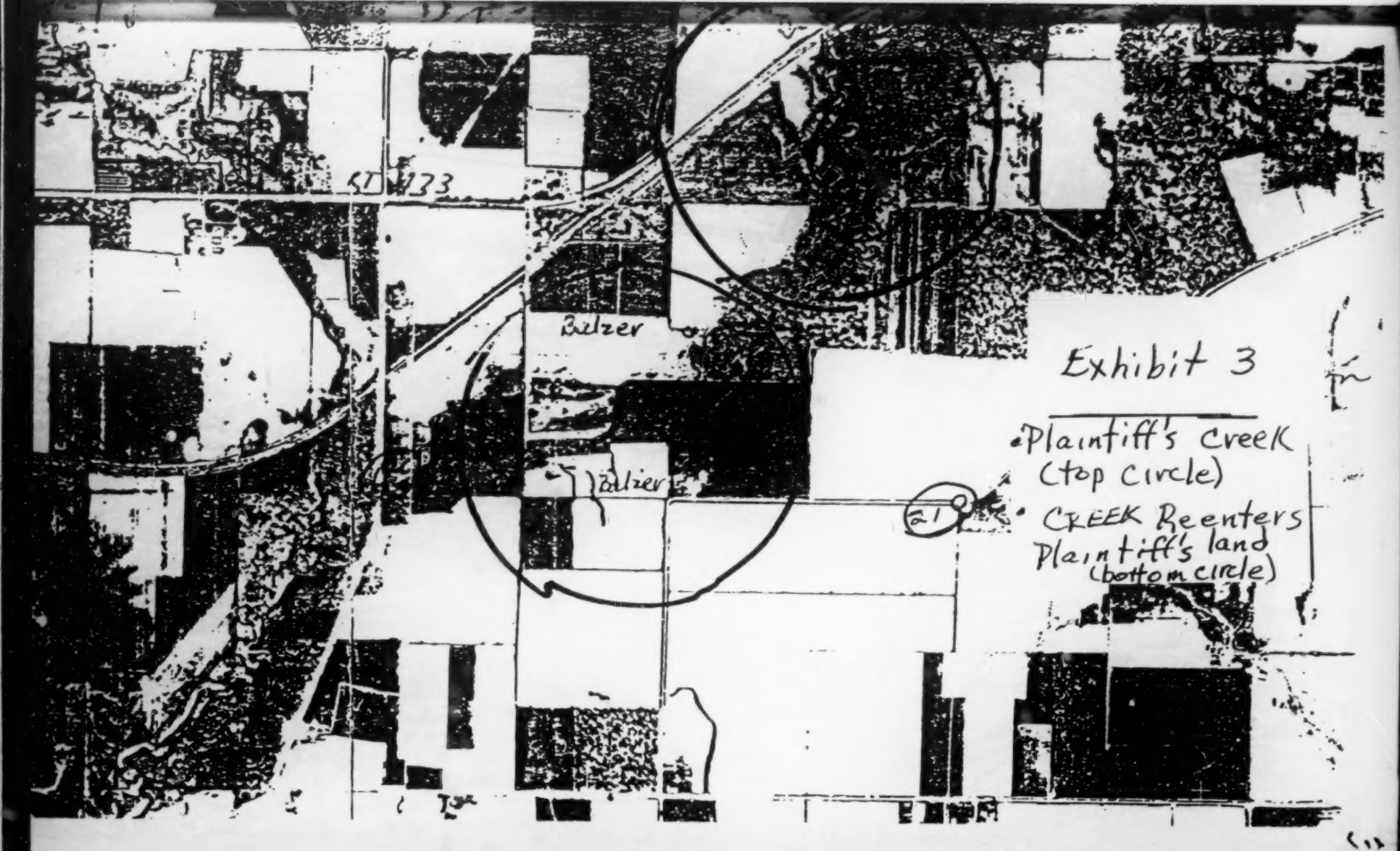

Exhibit 3

- Plaintiff's Creek (top circle)
- CREEK Reenters Plaintiff's land (bottom circle)

Exhibit 4
After
Rechannelization
• No Creek (Top)
• Flood Plain (Bottom)

Exhibit 5

could be secured by Jersey as a second mortgage to your existing first mortgage on the property in as much as the refurbished property value would far exceed the mortgages." In its May 23 letter, Jersey first advised Williams that Williams' mortgage had been placed in foreclosure. Jersey also wrote that it did not extend rehabilitation loans or second mortgage loans.

After the April 18 notification, Williams discontinued his rehabilitation work on the property. Williams attempted to get money from other lenders, but was unsuccessful "because of the Jersey Mortgage credit information which shows slow paying on the loan." On May 29, 1984, Jersey filed a complaint for mortgage foreclosure against Williams.

Williams subsequently filed a two-count counterclaim against Jersey, charging Jersey with breach of an oral contract and fraudulent misrepresentation, and an affirmative defense based on the breach of the oral contract claim. Jersey moved for summary judgment on July 30, 1986. On November 3, 1986, Williams filed an affidavit.

Although Williams was unable to supply the terms of the alleged additional financing when he gave his deposition in April of 1985, Williams clearly supplied such terms in his November 1986 affidavit. Williams' affidavit stated that [illegible]

moving party and liberally in favor of the opponent (*Killeen v. R.W. Dunteman Co.* (1979), 78 Ill.App.3d 473, 475, 33 Ill.Dec. 930, 397 N.E.2d 436) show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law (*Fooden v. Board of Governors* (1971), 48 Ill.2d 580, 586, 272 N.E.2d 497). A court of review will not reverse an order granting summary judgment unless it finds that a material question of fact is present and that the moving party is not entitled to judgment as a matter of law. *Estate of Kern v. Handelsman* (1983), 115 Ill.App.3d 789, 793, 71 Ill.Dec. 407, 450 N.E.2d 1286.

Furthermore, summary judgment is an appropriate procedure for a court to use in construing the legal principles of a contract. (*Village of Rosemont v. Lentin Lumber Co.* (1986), 144 Ill.App.3d 651, 659, 98 Ill.Dec. 470, 494 N.E.2d 592.) In the present case, therefore, summary judgment in favor of Jersey will not be reversed unless a material question of fact exists and Jersey is not entitled to judgment as a matter of law.

[1] Williams' affidavit cannot be used to contradict his prior deposition testimony and place material facts in issue [illegible]

Exhibit 6

vember 3, 1986, Williams filed an affida-

Although Williams was unable to sup- the terms of the alleged additional fi- cing when he gave his deposition in il of 1985, Williams clearly supplied h terms in his November 1986 affidavit. liams' affidavit stated that the amount he mortgage would be "for the amount ssary to do the rehabilitation to a 3- building," "the second mortgage would along with the first mortgage as to est and terms of repayment," and the rest on the second mortgage would be e V.A. market at that time." Despite ams' November 3 affidavit, Jersey's on for summary judgment was grant- On December 22, 1986, Williams filed e of this appeal.

purpose of summary judgment is not cide issues of fact but to determine ier any genuine issue of fact exists. s v. *Formfit Co.* (1966), 35 Ill.2d 533, 21 N.E.2d 633.) A motion for sum- judgment is properly granted if the ngs, depositions and admissions on gether with any affidavits and exhib- hen construed strictly against the versed unless a material question of fact exists and Jersey is not entitled to judgment as a matter of law.

[1] Williams' affidavit cannot be used to contradict his prior deposition testimony and place material facts in issue. When a party makes admissions which are so "deliberate and unequivocal as to matters within its knowledge," those admissions will conclusively bind that party and that party will be unable to later contradict those admissions. (*Baker-Wendell, Inc. v. Cohon & Associates, Ltd.* (1981), 100 Ill. App.3d 924, 929, 56 Ill.Dec. 237, 427 N.E.2d 317.) This rule is well accepted in summary judgment cases. (See *Schmahl v. A.V.C. Enterprises, Inc.* (1986), 148 Ill. App.3d 324, 102 Ill.Dec. 15, 499 N.E.2d 572; *Smith v. Ashley* (1975), 29 Ill.App.3d 932, 332 N.E.2d 32; *Fountaine v. Hadlock* (1971), 132 Ill.App.2d 343, 270 N.E.2d 222.) The judicial policy behind this rule is that once a party has given sworn testimony, he should not be allowed to commit perjury and change his testimony so as to avoid the consequences of his prior testimony. *Smith v. Ashley* (1975), 29 Ill.App.3d 932, 935, 332 N.E.2d 32.

found in Court file 6/89

Form 1.1 – NOTICE

EXHIBIT 7

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL C

BOONE COUNTY, ILLINOIS

Robert Balzer and
Joyce Balzer,

Plaintiff

VS.

Donald Meier, James Book,
K-B Farms, Inc., and
Robert H. Friel,

Defendant

AT LAW

No. 84 L 43

FILED
BOONE COUNTY, ILLINOIS
DEC 6 - 1988
Clerk of the Circuit Court

NOTICE

TO Atty. Michael F. O'Brien
850 N. Church St.
Rockford, IL 61103

Atty. G. Michael Scheurich
202 W. State St., #400
Rockford, IL 61101

Atty. Gary R. Kardell
401 W. State St., #400
Rockford, IL 61101

YOU ARE HEREBY NOTIFIED, that on the 9th day of December A.D. 19 88, at 1:30 o'clock P M., or as soon thereafter as Counsel may be heard, I shall appear before his Honor, Judge presiding in the room usually occupied by him as a Court Room, or in his absence, before any other Judge that may be presiding in said Court Room, in the Court House in Boone County at Belvidere Illinois, and then and there:

conduct status hearing to obtain pre-trial date.

...T – NOTICE ... Perfection ...al Forms &

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CI

BOONE COUNTY, ILLINOIS

ROBERT BALZER and JOYCE BALZER,

Plaintiff

VS.

DONALD MEIER, JAMES BOOK, K-B FARMS, INC., and ROBERT H. FRIEL,

Defendant

No. 84 L 43

FILED
BOONE COUNTY ILLINOIS
MAY 8 1989
Julie M. Klein
Clerk of the Circuit Court

NOTICE

TO Gary Kardell, Esq.
Suite 400
401 W. State St.
Rockford, IL 61101

G. Michael Scheurich, Esq.
Suite 400
202 W. State St.
Rockford, IL 61101

John J. Newton, Es
Suite 202
910 Second Ave.
Rockford, IL 61108

YOU ARE HEREBY NOTIFIED, that on the 19th day of May A.D. 19 89, at 2:30 o'clock PM., or as soon thereafter as Counsel may be heard, we shall appear before his Honor, Judge K. Craig Peterson in the room usually occupied by him as a Court Room, or in his absence, before any other Judge that may be presiding in said Court Room, in the Court House in Winnebago County at Rockford, Illinois, and then and there: present a Motion for Reconsideration of Motion for Summary Judgment and in addition for a pretrial conference previously requested by the plaintiffs.

4

78

REPORT OF ACREAGE

determine eligibility for assis
cannot be provided. The data

FARM NO.	NAME AND ADDRESS	FARM LAND	CROP LAND
254	ROBERT BALZER	112	89
11		D-6	
00			

OPERATOR

OWNER

PROGRAM YEAR 1979

OTHER

KEY	
3	
4	
5	
6	
7	

ON I - FARM FIELD REPORT (NOTE: Gray Shaded Area to be Filled in by Reporter ONLY.)

FIELD NO. (2)	CROP OR LAND USE (3)	CROP OR LAND USE SUMMARY: S.A	Corn	Beans	Hay/Past			NCA	KEY (5)	SH
A2	(Seeding) Set Aside	5.2						5.2		
		5.2						5.2		
A1	Corn		22.0					22.0		
			22.0					22.6		
B	Corn		1.6					1.6		
			1.6					1.6		
F	Corn		3.0					3.0		
			3.0					3.0		
C	2'-.5 Beans			35.9				35.9		
				35.9				35.9		
E.	Corn		13.7					13.7		
			13.7					13.7		
G	(Seeding) Set Aside	2.0						2.0		
		2.0						2.0		
D1	(Seeding) Set Aside	2.2						2.2		
		2.2						2 2		
C2	Pasture				6.2					
L OPERATOR REPORT		9.4	40.3	35.9	6.2			85.6		
L REPORTER'S REPORT		9.4	40.3	35.9	6.2			85.6		

ION II - OPERATOR'S CERTIFICATION NC 2 - 85.6

ly to the best of my knowledge and belief that the acreages of crops and land uses herein are true and correct. Further, my signature constitutes authority for ASCS nel to enter my farm for making any program determinations.

OPERATOR'S SIGNATURE Robert H.

Exhibit
9

36.2 1.1 10

USDA - ASCS

REPORT OF ACREAGE

NOTE: Section 374 of the Agricultural Adjustment Act of 1 will be used to determine eligibility for assistance. Fa provided. The data may be furnished to any agency i

2. TRACT NO.	3. FARMLAND	CROPLAND	4. PROGRAM YR	KEY	NAMES O
970	112	92.3	87		

ERATOR NAME AND ADDRESS
ROBERT BALZER

5. Other Farms

LEGAL DESCRIPTION

LD	CROP OR LAND USE	Prac-tice 1/	CROP STATUS 2/	16. CROP OR ACR	CORN	OATS	WHEAT	SOY
	13	14	15					
	Soybeans	NI	I					1.
	Soybeans	"	"					3
	Corn	"	"		36.4			
	Pasture	"	"					
	Pasture	"	"					
	Soybeans	"	"					1
H	Soybeans	"	"					1
	of Clu 5-1 N.R. Oats	"	"	9.1				
ERATOR REPORT				9.1	36.4			36
TERMINED ACREAGE								

'S CERTIFICATION - I certify to the best of my knowledge and belief that the acreage of crops and land uses li inaccurate acreage report could result in a payment reduction or loss of program benefits and/or reduction in fu

IGNATURE	DATE	OPERATOR'S SIGNATURE	DATE	OPERATOR'
R. Balzer	6-19-87			

Exhibit 10

Boone County and having effects in Winnebago County:

Illinois Dept. of Conservation

1) 26 species of fish, including small mouth bass, crappie, rock bass, and bullhead: 541 lbs. of fish per acre.

2) 10-15 acres of wetlands which provided habitat for waterfowl, fur bearers and fish spawning.

3) 90% reduction in fisheries diversity.

4) Terrestrial wildlife substantially reduced.

5) Beaver Creek is a tributary to Pierce Lake. There is danger of increased siltation of the lake.

6) Severe degradation of 5,600 feet of natural stream.

U.S. Department of the Interior
(Fish and Wildlife)

"Fish found included small mouth bass, rock bass, crappie, and bullhead. It is not unlikely that the stream also serves as a nursery area for fish of the Kishwaukee River. Channelization of the stream destroyed pool and riffle habitat important for food and shelter to the aquatic resource. The project also removed riparian vegetation which has bearers, and a shade and nutrient source for the stream. The southern quarter remains unfilled but livestock are using the area for watering, thus limiting the value for wildlife."

Exhibit II In short, a real ecological massacre occurred. Is t Exhibit II =

IN THE SUPREME COURT OF
THE UNITED STATES
January Term, 1991
No._____

JOYCE BALZER, PRO SE PETITIONER

v

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC. AND ROBERT H. FRIEL

TION FOR A WRIT OF CERTIORARI TO SUPREME COURT

peal from the Illinois Supreme Court

"Appendix"

Joyce Balzer, Pro se
1302 Coolidge Place
Rockford, Illinois
61107

(Public Official's Deposition)

A. 15831 Meier Road, Poplar Grove, Illinois.

Q. Meier Road is spelled the same as your name?

A. Yes.

Q. M-e-i-e-r, is that correct?

A. Yes.

Q. How long have you resided at that address?

A. Since 1946.

Q. This was on the farm that your father and mother initially operated?

A. Yes.

Q. And now you operate?

A. Yes.

Q. Do you own all of the land that now comprises the farm?

A. Yes.

Q. And did you own all of that land in 1979 other than the land which was subsequently purchased from Mr. Friel?

A. Yes.

Q. What is your education, sir?

A. High school.

Q. You are presently a member of the Boone County Board of Supervisors?

A. Fourteen years.

Q. And what committees have you served on in those 14 years?

A. All of the committees.

Q. What are the regular standing committees?

A. Finance, taxation, capital improvement, public safety. The committees have changed over the years.

Q. Any committees that deal with zoing or land use?

A. Yes.

Q. Any committees dealing with coordination with other governmental agencies?

A. Yes.

Q. You are now and have been familiar with the Environmental Protection Agency of the United States Government, are you not?

A. Yes.

Q. And you are now and have been familiar with the Department of Transportation for the State of

Illinois as weell as the Department of Conservation?

A. Yes.

Q. You are also familiar with the Army Corps of Engineers, are you not?

A. Vaguely.

Q. Have you ever had occasion to sit on any committee or other board to approve or disapprove of work on land within Boone County which required the change of the natural habitat or environment?

A. Yes.

Q. As a result of that experience or experiences were you aware that there are approvals that must be obtained, both State and Federally, for such projects.?

A. Yes.

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF BOONE, ILLINOIS

ROBERT BALZER and JOYCEE BALZER, Plaintiffs,	)	
v.	)	84 L 43
DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL, DEFENDANTS.	)	COMPLAINT

NOW COMES Plaintiffs, ROBERT BALZER and JOYCE BALZER, husband and wife, by th eir attorney, JOHN J. NEWTON, and as and for the claim states as follows:

1. The Plaintiffs reside at 1302 Coolidge, Rockford, Illinois and are the record owners of property located in Boone County, Illinois.

2. That Defendant, DONALD MEIER, is an adult resident of Boone County, residing at 15831 Meier Road, Poplar Grove, Illinois.

3. That Defendant, JAMES BOOK, is an adult resident of McHenry County, residing at 22701 Bunker Hill Road, Harvard, Illinois.

4. That Defendant, R. Robert Funderburg, is an adult resident of Boone County, residing at 530 1/2 South State Stree, Belvidere, Illinois, and

that he is an officer and director of the corporate Defendant, K. B. FARMS, INC., which is the owner of certian property located near or adjacent to that of the Plaintiffs in Boone County, Illinois, adjacent to that of the Plaintiffs in Boone County, Illinois, upon which land K. B. FARMS, INC., a corporation, conducts or transacts business and had done so at all times material hereto, that business being the farming business.

5. That Defendant, ROBERT H. FRIEL, is an adult resident of Boone County, residing at 7818 Route 173, Poplar Grove, Illinois.

6. That there is a navigable stream or river known as Beaver Creek which flows across the property owned by plaintiffs asafore mentioned.

7. That from a point south of Illinois Route 173 and across land owned by Defendants, DONALD MEIER, JAMES BOOK, K. B. FARMS, ROBERT H. FRIEL, and Plaintiffs, the navigable stream flowed without any unnatural restriction of any nature.

8. That subsequent to August 1, 1979, Defendants, jointly and severally, commenced work

upon their lands which included the channeling of new artificial channels and damming of Beaver Creek, redirecting Beaver Creek into the new channels, dredging portions of Beaver Creek, and dumping dredge or fill material into the waters of such creek without obtaining any local, county, state, or federal permit.

9. That as a direct and proximate result of the aforesaid wrongful acts and omissions of said Defendants, DONALD MEIER, JAMES BOOK, R. ROBERT FUNDERBURG, on his own behalf and as agent and servant of K. B. FARMS, INC., and ROBERT H. FRIEL, a portion of Beaver Creek which had previously run across portions of the property of the Plaintiffs herein was caused to be dried up, and other portions of Beaver Creek which ran across and upon the Plaintiffs' property had been adversely affected by the deposit of additional silt, sludge, effluent, and increased velocitty in the water flow in Beaver Creek, causing erosion of land of the Plaintiffs.

10. That the work by the Defendants

proceeded notwithstanding notice by the Illinois Department of Transportation, Divilsion of Water Resources and the United States Army Corps of Engineers to cease construction of such channels and diverting of such water.

11. That the Plaintiffs, as a direct and proximate result of the aforesaid wrongful acts and omissions of the Defendants, and each of them, have sustained damage to their property consisting of the diversion of Beaver Creek off portions of their property and the lessening of the water quality of Beaver Creek.

WHEREFORE, Plaintiffs request that judgment be entered in an amount in excess of one hundred thousand dollars.

Plaintiffs request trial by jury.

ROBERT BALZER and JOYCE BALZER

Plaintiffs by their attorney,

JOHN J. NEWTON

Prepared by:
JOHN J. NEWTON
ATTORNEY AT LAW
910 Second Avenue
202 Freeman Square
Rockford, Illinois 61108
Tele. (815) 964-8800

DEMAND FOR A JURY

In the Circuit Court, 17th Judicial Circuit, Boone County, Illinois

ROBERT BALZER AND JOYCE BALZER

Plaintiff(s)

vs.

DONALD MEIER, JAMES BOOK, R. ROBERT FUNDERBURG, K. B. FARMS, INC. AND ROBERT H. FRIEL

Defendant(s)

The plaintiff(s) in the above entitled ccause demand a jury for the trial of said cause.

ROBERT BALZER

JOYCE BALZER

By JOHN J. NEWTON

THEIR ATTORNEY

STATE OF ILLLNOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

ROBERT BALZER and
JOYCE BALZER,
Plaintiffs,

vs.

DONALD MEIER,
JAMES BOOK, R. ROBERT FUNDERBURG
K. B. FARMS, INC., and
ROBERT H.
FRIEL

Case No. 84 L 43

Defendants

AMENDED COMPLAINT

NOW COMES Plaintiffs, ROBEERT BALZER and JOYCE BALZER, husband and wife, by their attorney, JOHN J. NEWTON, and as and for the claim states as follows:

1. The Plaintiffs reside at 1302 Coolidge, Rockford, Illinois and are the record owners of property located in Boone County, Illinois.

2. That Defendant, DONALD MEIER , is an adult resident of Boone County, residing at 15831 Meier Road, Poplar Grove, Illinois.

3. That Defendant, JAMES BOOK, is an adult

resident of McHenry County, residing at 22701 Bunker Hill Road, Harvard, Illinois.

4. That corporate Defendant, K. B. FARMS, INC., is the owner of certain property located near or adjacent to the Plaintiffs in Boone County, Illinois, and such corporation conducts or transacts business at that site and at all times material hereto has conducted such farming business as aforementioned.

5. That Defendant, ROBERT H. FRIEL, is an adult resident of Boone County, residing at 7818 Route 173, Poplar Grove, Illinois.

6. That there is a navigable stream or river known as Beaver Creek which flows across the property owned by plaintiffs asafore mentioned.

7. That from a point south of Illinois Route 173 and across land owned by Defendants, DONAL MEIER, JAMES BOOK, K. B. FARMS, ROBERT H. FRIEL, and Plaintiffs, the navigable stream flowed without any unnatural restriction of any nature.

8. That subsequent to August 1, 1979,

Defendants, jointly and severally, commenced work upon their lands which included the channeling of new artificial channels and damming of Beaver Creek, redirecting Beaver Creek, and dumping dredge or fill material into the waters of such creek without first obtaining any local, county, state or federal permit.

9. That the channelizatiion of Beaver Creek, aforementioned was done without permission of Plaintiffs.

10. As a result of the conduct on behalf of the Defendants aforementioned they have trespassed upon the land owned by Plaintiffs by redirecting the creek that naturally flowed through the property, as a result of such trespass, Beaver Creek which had previously run acorss the portions of the Plaintiffs propety has now ceased to do so. Such cesation has adversely affected the enjoyment of the land by Plaintiffs and further has adversely been affected by the deposit of the silt, sludge, effluent and has increased the velocity of the channelization portion of the creek to cause direct

erosion of the land owned by the Plaintiffs.

11. That the work by the Defendants proceeded notwithstanding notice by the Illihnois Department of Transportation, Division of Water Resources and the United States Army Corps of Engineers to cease construction of such channels and diverty of such water.

12. That the Plaintiffs, as a direct and proximate result of the aforesaid wrongful acts and omissions of the Defendants, and each of them, have sustained damage to their property consisting of the diversion of Beaver Creek off portions of their property and the erosion of their property and the sessenting of the water quality of Beaver Creek.

WHEREFORE, Plaintiffs request that judgment be entered in an amount in excess of one hundred thousand dollars.

Plaintiffs request trial by jury.

ROBERT BALZER and JOYCE BALZER

by their attorney,

JOHN J. NEWTON

Prepared by:
JOHN J. NEWTON
ATTORNEY AT LAW
910 Second Avenue
202 Freeman Square
Rockford, Illinois 61108
Tele. (815) 964-8800
10:016

Judge Robert J. French

STATE OF ILLLNOIS
IN THE CIRCUIT COURTT
COUNTY OF BOONE

ROOBERT BALZER AND JOYCE BALZER,

Plaintiffs,

AT LAW

-vs-

CASE NO. 84 L 43

DONALD MEIER, JAMES BOOK, R. ROBERT FUNDERBURG, K-B FARMS, INC., AND ROBERT H. FRIEL,

Defendants.

O R D E R

THIS MATTER coming on for hearing beforeme, the undersigned judge, on February 28, 1985, on the Motion of the plaintiffs for change of venue to anoter county; the plaintiff, JOYCE BALZER appearing in person, and both plaintiffs appearing by their attorney, John j. Newton; the defendants appearing by their attorneys, Guyer, Enichen, Mayfield & Scheurich; and the Court having heard the arguments of counsel and being fully advised in the premises;

IT IS ORDERED that plaintiffs' Motion for Change of Venue be and the same is hereby denied.

Dated: March 28, 1985

ENTER:

Robert J. French

Judge

Read and approved by undersigned:
John J. Newton, Attorney for
Plaintiffs

G. Michael Scheurich, Attorney
for Defendants
Prepared by:
G. MICHAEL SCHEURICH
Guyer, Enichen, Mayfield & Scheurich
401 West State Street, Suite 202
Rockford, Illinois 61101
(815) 965-8775

Filed 3/28/85

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.: 84 L 43

ROBERT BALZER and)
JOYCE BALZER,)
Plaintiffs,)
)
-vs-)
)
DONALD MEIER,)
JAMES BOOK,))
K. B. FARMS, INC., and)
ROBERT H. FRIEL,)
Defendants)

MOTION FOR SUMMARY JUDGMENT

COME NOW, the Defendants above-named by their attorneys Guyer & Enichen, by G. Michael Scheurich, and pursuant to Sec. 2-1005 of the Illinois Code of Civil Procedure, move the Court for entry of summary judgment in favor of the Defendants and against the Plaintiffs as to all of the relief sought against all of the Defendants.

Plaintiffs Amended Complaint alleges a trespass, if it alleges any action at all, and the necessary element of trespass is lack of permission by the owner of the land. The attached affidavit

of the Defendant, Donald Meier, establishes permission by the owner of the land. The attached affidavit of the Defendant, DONALD MEIER, establishes permission by Plaintiff, ROBERT BALZER, owner of the land, thereby vitiating Plaintiffs alleged cause of action.

WHEREFORE, Defendants pray that Plaintiffs Amended Complaint be dismissed with prejudice at Plaintiffs costs.

DONALD MEIER, JAMES BOOK, K-B FARMS, INC., and ROBERT FRIEL,
Defendant's
By: Michael Scheurich

Prepared by
G. MICHAEL SCHEURICH
Guyer & Enichen
202 West State Street, Suite 400
Rockford, Illinois 61101
(815) 965-8775

FILED JULY 28, 1987

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.:
84 L 43

ROBERT BALZER and)
JOYCE BALZER)
Plaintiffs)
-vs-)
)
DONALD MEIER,)
JAMES BOOK,)
K-B. FARMS, INC., and)
ROBERT H. FRIEL,)
Defendants)

AFFIDAVIT IN SUPPORT
OF MOTION FOR SUMMARY

DONALD MEIER, being first duly sworn on oath deposes and says that he is one of the Defendants in the above entitled actilon and further states as follows:

1. He personally engaged in conversations with the Plaintiff, ROBERT BALZER, owner of the real estate herein involved.

2. Prior to the commencement of work of straigtening Beaver Creek, he notified Plaintiff, ROBERT BALZER, of the Defendants intentions and was granted permission by the Plaintiff, ROBERT BALZER, who responded to the proposal to straighten Beaver

Creek in words substantially similar to the following "It sounds fine to me, but I won't pay more than $1200 for my share of thejob".

3. After receiving such permission from Plaintiff, ROBERT BALZER, the Defendants commenced the work of straightening Beaver Creek and prior to the substantial completion of the dam and new channel of Beaver Creek, and complete re-direction of water flow, were never informed by the Plaintiffs or either of them that the permission given by ROBERT BALZER had been revoked, rescinded, or modified.

4. If called as a witness herein, your affiant would testify as above set forth and would be and is competent so to do.

FURTHER AFFIANT SAYET NOT.

Donald Meier

SUBSCRIBED AND SWORN to before
me this 28th day of july, 1987.

Notary Public

FILED JULY 28, 1987

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

ROBERT BALZER, being first duly sworn on oath deposes and says that he is one of the Plaintiffs in the above-entitled action and further states as follows:

1. He personally engaged in a single conversation with the Defendant, Donald Meier, by telephone in October of 1979.

2. The telephone conversation took place by me at my home.

3. I am the owner of the real estate which is the subject of the above-encaptioned matter, but that such real estate was located in Boone County rather than in Winnebago County, where I reside.

4. The telephone call in the basement of my home. At the time the phone call was placed, my wife was at school obtaining additional credits while I cared for the children.

5. The Defendant, Donald Meier, asked whether or not permission could be granted for work

to be done upon my land, for the cannelization of Beaver Creek. To the best of my recollection I responded, "I can't get involved with it." "I am not able to do anything on my farm at the present time or at any time." "I have no money and my wife is in school, therefore I can not be part of anything that you intend to do."

6. I came upon the land in January of 1980, to discover exactly what they were doing to the property. Prior to that time, I at no time granted any one any permission to come upon my land for the canelization of Beaver Creek.

FURTHER AFFIANT SAYET NOT.

Subscribed and sworn to before me this 27th day of July, 1987.

John J. Newton (Seal)

Notary Public

10:097

FILED JULY 28, 1987

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

ROBERT BALZER, being first duly sworn on oath deposes and says that he is one of the Plaintiffs in the above-entitled action and further states as follows:

1. He personally engaged in a single conversation with the Defendant, Donald Meier, by telephone in October of 1979.

2. The telephone conversation took place by me at my home.

3. I am the owner of the real estate which is the subject of the above-encaptioned matter, but that such real estate was located in Boone County rather than in Winnebago County, where I reside.

4. The telephone call in the basement of my home. At the time the phone call was placed, my wife was at school obtaining additional credits while I cared for the children.

5. The Defendant, Donald Meier, asked whether or not permission could be granted for work

to be done upon my land, for the channelization of Beaver Creek. To the best of my recollection I responded, "I can't get involved with it." "I am not able to do anything on my farm at the present time or at any time." "I have no money and my wife is in school, therefore I can not be part of anything that you intend to do."

6. I came upon the land in January of 1980, to discover exactly what they were doing to the property. Prior to that time, I at no time granted any one any permission to come upon my land for the channelization of Beaver Creek.

FURTHER AFFIANT SAYET NOT.

Subscribed and sworn to before me this 27th day of July, 1987.

Notary Public

10:097

FILED JULY 28, 1987

Q. Let me just step aside, and I don't mean to bagger you at all. In your affidavit -- you have it in front of you. In your affidavit where you say, "The defendant asked whether or not permission could be granted for work to be done upon my land for the channelization for Beaver Creek," you now testify that you told Meier no, but your answer in the affidavit was somewhat less definitive than that.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

CASE NO. 84 L 43

ROBERT BALZER and)
JOYCE BALZER)
Plaintiffs)
-vs-)
)
DONALD MEIER,)
JAMES BOOK,)
K-B. FARMS, INC., and)
ROBERT H. FRIEL,)
Defendants)

O R D E R

THIS CAUSE coming on to be heard on the 28th day of July, 1987, upon the defendants' Motion for Summary Judgment, the plaintiffs being represented in Court by their attorney, John J. Newton, and the defendants being represented in Court by their attorney, G. Michael Scheurich, and the court having heard the arguments of counsel and having examined the documents offered by counsel and being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that defendants' Motiojn for Summary judgment be and the same is hereby denied.

Date: August 28, 1987.

Enter:

Judge Kapala

FILED 8/28/87

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.:
84 L 43

ROBERT BALZER and)
JOYCE BALZER)
Plaintiffs)
-vs-)
)
DONALD MEIER,)
JAMES BOOK,)
K-B. FARMS, INC., and)
ROBERT H. FRIEL,)
Defendants)

MOTION

COMES NOW the defendant, ROBERT H. FRIEL, by his attorneys, GUYER & ENICHEN, G. Michael Scheurich, and hereby joinsthe Motion for Summary Judgment of the defendants, DONALD MEIER, JAMES BOOK, K. B. FARMS, INC., filed herein on February 3, 1988.

ROBERT H. FRIEL, Defendant

By: Michael Scheurich

Guyer & Enichen
202 West State Street, Suite 400
Rockford, Illinois 61101
(815) 965-8775
FILED FEBRUARY 10, 1988

STATE OF ILLINOIS
CIRCUIT COURT
SEVENTEENTH JUDICIAL CIRCUIT

Atty. Mike O'Brien
850 North Church Street
Rockford, IL 61103

Atty. Michael Scheurich
202 West State #400
Rockford, IL 61101

Attorney John Newton
910 2nd Avenue #202
Rockford, IL 61108

Robert Balzer and Joyce Balzer
v.
Donald Meier, James Book, K-B Farms, Inc., and
Robert H. Friel

MEMORANDUM OF DECISION

I have entered the following order:

Defendant's motion for Summary Judgment heard and denied.

A triable issue precluding summary judgment exists where there is a dispute as to material facts or where reasonable people might draw different inferences from material facts being undisputed. (Cite omitted). In determining whether a genuine issue as to material fct exists, the Court must construe the pleadings, depositions, and affidavits most strictly against the movant and most liberally in favor of the opponent. (Cite omitted). Summary

judgment should be granted only when the party's right to it is clear and free from doubt. (Cite omitted).

After the reviewing the pleadings, affidavits, and after sifting and culling, the depositions three times and finding in particular Mr. Balzer's testimony contradictory, confusing, ambivalent,evasive, and garbled I cannot say that defendants have met this burden.

If counsel can imagine the thickness of a human hair, that is the margin by which the motion is denied.

Very truly yours,

Craig Peterson
Associate Circuit Judge

WRITTEN MAY 13, 1988 AND FILED MAY 13, 1989

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.:
84 L 43

ROBERT BALZER and)
JOYCE BALZER)
Plaintiffs)
-vs-)
)
DONALD MEIER,)
JAMES BOOK,)
K-B. FARMS, INC., and)
ROBERT H. FRIEL,)
Defendants)

ORDER

THIS CAUSE coming on to be heard on April 12, 1988 upon Defendants' motion for summary judgment, and Plaintiffs, ROBERT BALZER AND JOYCE BALZER, being personally present in court and represented by their attorney, JOHN J. NEWTON, and defendants, DONALD MEIER, JAMES BOOK AND K-B FARMS, INC., being represented in court by their attorney, MICHAEL F. O'BRIEN, and Defendant, ROBERT H. FRIEL, being represented in court by his attorney, G. MICHAEL SCHEURICH, and the court having heard the testimony of Plaintiffs and statements of counsel, and being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' motion for summary judgment be and the same is hereby denied.

Date: _____

ENTER:

Judge Craig Peterson

Read and approved:

Attorney Michael F. O'Brien

Attorney G. Michael Scheurich

Attorney John J. Newton

Prepared by;

John J. Newton, Esq.
202 Freeman Square
910 Second Avenue
Rockford, Illinois 61104-2186
815-964-8800

NOT SIGNED--FOUND IN FILE RETURNED BY FORMER COUNSEL; WAS FILED BY PLAINTIFF AUGUST 25, 1989.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.:
84 L 43

ROBERT BALZER and)
JOYCE BALZER)
Plaintiffs)
-vs-)
)
DONALD MEIER,)
JAMES BOOK,)
K-B. FARMS, INC., and)
ROBERT H. FRIEL,)
Defendants)

MOTION FOR RECONSIDERATION OF
MOTION FOR SUMMARY JUDGMENT

The defendants, Donald Meier, James Book and K-B Farms, Inc., by their attorneys, Clark, McGreevy & johnson, P.C., move for reconsideration of their previously filed motion for summary judgment and in support thereof state the following:

1. Although the court has previously ruled that there is a general issue of material fact as to whetheer or not the plaintiffs, Robert and joyce Balzer ("the Balzers"), consented to the trespass upon their property, the Court did not

specifically address the additional issue raised by the original motion for summary judgment, which was whether or not the Balzers had any viable claim for damages.

2. The Balzers have admitted that they suffered no actual damages as a result of the alleged trespass, and it is also undisputed that, although the creek was diverted from their property, the only reason it remains in that condition is because the Balzers refused the defendants' offer to restore the flow onto their property in the original channel in accordance with the permit granted by the United States Corps of Engineers.

3. The Balzers have failed to mitigate by refusing to permit the restoration of the flow and therefore as a matter of aw have no claim for damages.

WHEREFORE, the defendants, Donald Meier, James Book and K-B Farms, Inc., move for summary judgment for the reason that the plaintiffs, Robert and Joyce Balzer, have no damages and have failed

to mitigate as a matter of law.

DONALD MEIER, JAMES BOOK AND

L-B FARMS, INC., Defendants

By: CLARK, McGREEVY 7 JOHNSON,

P.C.

Their Attorneys

By: Michael O'Brien

One of Their Attorneys

Michael F. O'Brilen
Clark, McGreevy & Johnson, P.C.
850 North Church Street
Rockford, IL 61105-1201
(815) 963-8451

Filed May 8, 1989

May 5, 1989

The Honorable K. Craig Peterson
Associate Judge
Winnebago County Courthouse
400 West State Street
Rockford, IL 61101

Re: Balzer v. Meier, et al
Case No. 84 L 43
In the Circuit Court
of the 17th Judicial
Circuit, Boone
County, Illinois

Dear Judge Peterson:

You will Recall that the plaintiffs' attorney, Jack Newton, and I recently agreed that the renewed summary judgment motion and pretrial conference should take place in fron of you on Friday, May 19, 1989, at 2:30 p.m., which was a time and date that you had suggested. Therefore, I have filed the enclose motion and notice with the clerk in Belvidere, and these copies are for your personal use and as a reminder of the hearing and pretrial conference (to be held in Rockford).

Very truly yours,

Michael F. O'Brien

MOB/ksf

Enclosures

FILED 6/16/89

REBUTTAL OF INTERPRETATION OF BALZER'S DEPOSITION IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (March 4, 1988)

After viewing the misinterpretations and general twisting in the Motion for Summary Judgment and was REALLY said on both depositions we prepare this rebuttal...Considering in the excess of (5) hours of grilling by the Counsel we did expect a more accurate interpretation. Be that as it is, we will attempt to examine both the time frame and correct definitions, both of which are essential for correct interpretation..Regarding the time frame and its setting from September, 1979 to January 1, 1980 Robert Balzer, Friel, and Meier were the key players..,Joyce, was not at home when the calls were made...From Jan. 2 to the present the key players have been Joyce Balzer, defendants and agency personnel...

Both Robert and Joyce Balzer disagree adamantly

with Mr. O'Brien's statement on page 8 about damages. Keep in mind the following points:

1. The Balzers have encountered substantial damages by this aggressive act.

2. These damages consist of loss of future home site, recreational area, 15 acres of decreased production land downstream, eight years of being held hostage to approximately $10,000 interest payments for a place where our planning, performance and enjoyment have been so rudely and cruelly interrupted. Add it up, our opinion in excess of $200,000 for actual damages. Continued procrastination will only make the price go higher!!!"

Joyce Balzer

FILED JULY 24, 1989

MOTION FOR REHEARING OF
RECONSIDERATION OF MOTION FOR
SUMMARY JUDGMENT

Joyce Balzer, plaintiff pro se, is herein requesting the Court for a hearing on the Reconsideration of Motion for Summary Judgment that resulted in a judgment order to dismiss the above case May 19, 1989. Since 7/87 and there after, certain events have shaped and threatened the above case which led to its dismissal. Some of the irregularities are set forth as follows:

1. The plaintiffs were NOT made aware of the court activity to reconsider the motion for summary judgment which supposedly took place on May 19, 1989, nor the Order which resulted therefrom, until almost a month later. No notice, no Court Reporter and no written pleadings on their behalf were in the court file as of 6/13/89 and have been confirmed to the plaintiffs as "non-existent"

Likewise, no court reporter was present for any significant court activity on this case since 5/20/87; From 7/87 on there is no record of any defense by their attorney in either the court file or attorney's file.

2. Within the depositiions there exists confusion of the terms rework and channelization (synonymous)--maintaining natural stream be; and confusion of canalization and rechannelization (synonymous)--meaning make new pathways. (World Book Dictionary, 1984; and Webster's Dectionary, 1958)...3. No consent was given to either Meier or Friel...In the judgment order, 1-a, it is very unreasonable, to say nothing about impossible to prove a negative, to think NOT appearing at a meeting at the ASCS office that Robert Balzer showed by his conduct that he gave consent is absurd...4. Regarding damages both depositions maintain we no longer have what we bought! Damages are the price of the farm @ $2500 per acre with compounded interest of 10% since January 1, 1980; pus $10,000 per year per child for decrease in

quality of life and interference with the self-determination of their parents rearing their children in the rural environment originally planned..

5. The charge of failure to mitigate damages is to follow the technical advice given by an hydraulic technician which state 1-2-80 to Joyce Balzer. If the larger, straighter, lower, deeper channel is dammed up to redirect Beaver Creek back into your property you will eventually lose it. The distance between the new channel and the meandering stream is as little as 15ft. "In wet, flooding times the meandering creek will cut its path on the surface to the drainage ditch 27 ft. wide and 5 ft. deep; in dry times the lowered water in the drainage ditch will draw underground waters from the meandering creek." The Corps says what was done cannot be undone; Balzers say they do not have what they bought. There was No self-determination given to the plaintiffs either by the Corps or defendants. Both continued unilaterally in their restoration plans...

Joyce Balzer, Plaintiff

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT

COUNTY OF BOONE, ILLINOIS

JOYCE BALZER ON BEHALF OF SHARI, MARI, TERESA, SANDI, KIM, JOHN DAVID, STEVEN AND ROBERT BALZER,	)	
Plaintiffs	)	
V.	)	84 L 43
DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL	)	
Defendants	)	

REPLY TO MOTION FOR SANCTIONS PURSUANT TO SECTION 2-611

Joyce Balzer, plaintiff pro se, sets forth the following facts why filing for Rehearing of Reconsideration of Motion for Summary Judgment did NOT violate Section 2-611.

1. Plaintiffs' due process rights were blantantly violated in failing to give adequate and timely notice and failing to provide for right to trial by jury. The central core of due process is that "A person should always have notice and a real chance to present his or her side on a legal dispute and

that no law or government procedure shall be arbitrary or unfair." (Social Work and the Law; p.803 by Brieland and Lemmon, 1977).

2. The Balzers do not "falsely" allege that the "aforesaid work 'was done without permission of the Plaintiffs'." The Balzers state Truthfully that the illegal rechannelization drainage network, devised by the defendants, was done without Mr. Balzer's permission. Three very brief telephone contact calls by Robert Friel and one extremely brief call from Donald Meiers (a nonacquaintance) all talked about reworking or making deeper the existing creek and all received ABSOLUTELY no permission to do ANYTHING! Mr. Balzer's task at hand was feeding his five little girls (ages 5-9), getting them ready for bed or trying to talk above their play on the telephone. After all, he was Substitute Mom while his wife was away a school and caring for their two youngest babies.

3. Also, in #3 of Mr. O'Brien and Mr. Scheurich's Motion for Sanctions against the plaintiffs is INCORRECTLY stated that Mr. Balzer sent a letter to

United States Army Corps of Engineers saying he had agreed to the work (What work? The work talked about in the very brief phone conversations mentioned above or the work of making completely new pathway of a 27'X5'x5280' long drainage ditch intercepting Balzer's creek.) It really does NOT matter what the defense counsels mean--No permission was given for Anything! What page 91-92 of Robert Balzer's Deposition says is: Page 91 (line 22) "Do you recognize that letter?" (Exhibit No. 3) Balzer said "Yes". He recognized the letter. He had not written it. All the letters written after discovery of the Rechannelization were written by Joyce Balzer on either one of two old clunkity typewriters, with only bits and pieces of information since she had not been privy to any of the four brief telephone contacts, with 7 little children all-with their own needs-and pregnant with the 8th child, at a time interval when she was completing an internship back in Rockford at JWMH Clinic and on night shift at Swedish Am. Hospital. Mr. Balzer would sign the correspondence his wife

question and assessment of fees. The plaintiffs, the Balzers, would also like to make the point that they are entitled to a trial so that a jury can scrutinize the lack of permission and the resultant damages of the defendants' aggressive devastation toward their property.

7. Part of the problem may be that the defendants do NOT know what the word permission means. Mr. Meier stated "Yes" in his deposition (Page 6) when asked the question, "As a result of that experience or experiences (Reference to Boone County Board member fuction of approving or disapproving work on land requiring changing natural habitat or environment) were you aware that there are approvals that must be obtained both State and Federally, for such projects?" Mr. Meiers goes on to relate in the same deposition, (Page 7), that "After Jim (Book) and his sons had bought the farm, (east of Balzers), we started making contaacks and talking to the different neighbors, and the ones that were interested went along with the project." Mr. Balzer has repeatedly stated he was NOT

interested, therefore, Mr. Balzer did NOT logically go along with the project. Meiers also believes that the wet farm east of Balzer was purchased BEFORE he had talked with any of the neighbors about "Straightening the creek." (Page 8). What was going to be done had already been decided to be done irregardless of Balzer's imput. Question to Mr. Meier, (Page 11) asks, "Mr. Balzer was not present at that meeting, was he?" Mr. Meier replies, "No, but he was notified of the meeting, as all the people were." Mr. Balzer's conduct of not attending that meeting indicates permission??? Is that really permission? Page 13 states that Friel, the defendant who notified Balzer about the meeting at the ASCS office, did NOT attend the meeting himself. Very interesting. On page 12 Meiers stated, "I called him I think on two different occasions. One time I talked to his wife and he wasn't home at the time, and I called back and talked to Bob and asked to set up a meeting time on site, or over at Robert Friel's rather, the following Sunday...Mr. Balzer never showed up at

Joyce Balzer
Filed 7/24/89

ANSWER TO REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENT

Please check records and see where Fields D and G have remained untillable (listed as pasture land) for the past 10 years.

5. Therefore, the complete statement in # 5 is incorrect. Due to flooding propensity after the rechannelization the land has been lying dormant, untillable. On the ASCS Office records Pasture land is listed under the category CU (Cropland Unused). This figures into the cropland total but is not set aside acreage for deficiency payments The las t such payment for the area in question was in 1979, prior to the rechannelization. The only increase in total acreage was South of the Creek (Field E) and does not concern the object of controversy.

Robert and Joyce Balzer

3/27/89

FILED 7/24/89

Appellant Brief

POINTS AND AUTHORITIES

1. A motion to reconsider a judgment falls within the category of post-judgment motions which must be filed within 30 days after the challenged judgment is entered.

Illinois Revised Statutes, as amended, Chapter 110, Section 2-1203 Page 2,3.

Archer Daniels Midland Co. v. Barth, 103 Ill. 2d 536, 538. Page 8.

Sears v. Sears, 85 Ill. 2d 253, 258, 259. Page 8.

2. The utilization of a summary judgment is particularly inappropriate where the inferences which the parties seek to have drawn deal with questions of motive, intent and subjective feelings and reactions.

State Farm Mutual Automobile Insurance Co. v. Short , 125 Ill. App. 2d 97, 106. Page 8.

Schuster v. E. St. Louis Jockey Club, 37 Ill. App. 3d 483, 487. Page 8, 23.

Montgomery Ward & Co. v. Wetzel, 98 Ill. App. 3d 243, 247. Page 8.

State National Bank of Annawan v. Kewanee National Bank, 16 Ill. pp. 3d 272, 274. Page 8.

3. A summary judgment should not be granted if there is a disagreement of any material fact or facts.

Simaitis v. Thrash, 25 Ill. App. 2d 340, 348. Page 9.

Reith v. General Telephone Co., 22 Ill. App. 3d 337, 339. Page 9, 10.

Lundin v. Egyptian Construction Co., 29 Ill. App. 3d 1061, Page 9.

4. A court may not draw inferences of fact on a motion for summary judgment.

State Farm Mutual Automobile Insurance Co. v. Short, 125 Ill. App. 2d 97, 106. Page 10.

5. Depositions may not be utilized in motions for summary judgment or referred to in the pleadings of such motions without having been properly made a part of the court record. Illinois Revised

Statutes, as amended, Chapter 110A, Section 202, Supreme Court Rule 207. Page 8.

Illinois Revised Statutes, as amended, Chapter 110A, Section 202, Supreme Court Rule 207. Page 8.

Bezin v. Ginsburg, 59 Ill. App. 3d 429, 436. Page 10.

6. One's land may not be controlled or affected in anyway by another without a written contract and such owner of land has the self-determination of judgment regarding his land, except under Law of Eminent Domain.

Statute of Frauds, (404 Ill. 362, 89 N.E.2d. 51). Page 14.

Department of Transportation v. Harper, 64 Ill. App. 3d 732, 381 N.E. 2d, 21 Ill. Dec. 516 (1978).

Kugl v. Village of Brookfield (1944), 322 Ill. App. 349, 54 N.E. 2d 92 (1st Dist.).

PETITION FOR LEAVE TO APPEAL

To: The Honorable Justice of the Illinois Supreme Court:

Your Petitioner Joyce Balzer, pro se, hereby petitions this Court for leave to appeal from the decision of the Illinois Appellate Court, Second District, wherein the Court affirmed an order of the Circuit Court of Boone County granting summary judgment against Petitioner and in favor of Respondents, Donald Meier, James Book, K-B Farms, Inc., and Robert H. Friel. Basing their evidence on the fraudulent affidavits and discovery depositions that deponent had no opportunity to have quoted within their context or contradicted with other evidence, they said that Plaintiff R. Balzer gave his consent for the illegal rechannelization, even though the Record on Appeal reflects how Plaintiff Robert Balzer was "set up" for contradiction with the filing of an incorrect affidavit by own counsel and such counsel allowed defense to depose his client with the Corrected Affidavit. Even though it was impossible for

plaintiff to give permission when what even was talked about on the phone did not even transpire. Even though own counsel, under the guise of a Court-ordered name-change, also, fraudulently amended the true nature of the complaint from Rechannelization to Channelization. Defendants' depositions were not permitted to be admitted as evidence on the Record of Appeal. Reality is that plaintiffs did not having access to their file at crucial times and the Record of Appeal does not truly reflect all the evidence, especially the inclusion of defendants' depositions which shows that no consent whatsoever was given. Furthermore, the Appellate Court did not address the contention by plaintiff of legitimately having a right to know who got the money K-B Farms' Insurance Co., under K-B Farms' liability policy, was willing to throw into the pot, as they were so informed by own counsel. The conclusions reached by the Appellate Court are based on fraudulent evidentiary materials found in the Record on Appeal whereby, they ignored the question of fraud raised by plaintiff.

The Appellate Court's opinion was filed on May 3, 1990, and within 21 days thereafter, on May 23, 1990, Petitioner filed a Notice of Intent to Appeal to this Court.

REASONS WHY THIS COURT SHOULD GRANT LEAVE TO APPEAL

This Court should grant leave to appeal in this matter for the following reasons:

1. Plaintiff believes that attorney and judge misconduct consists of dishonesty, fraud, and deceit, and is directly responsible for case dismissal.

2. Plaintiffs' Constitutional Rights, State and Enviornmental Laws were violated by defendants, the perpetrators, sending the message to others that "Might makes Right", causing plaintiffs to suffer damages and hardship by the defendants' illegal acts while defendants continue to reap the profits from draining their wetlands, at others' expense.

3. It is of importance to the State of Illinois

that its citizens be allowed to make property purchases and have them protected in their absences so they may exercise self-determination of such property.

4. It is of importance to the State of Illinois that Summary Judgment not be utilized to deprive its citizens of their constitutional rights of due process by sneakingly dismissing their case and using fraudulent evidentiary materials, placing on them undue hardship of appealing.

5. It is of importance to the State of Illinois that judicial districts avoid practices that cause distrust among the citizens of this State; e.g. "Taking cases under advisement" and then truncating them without the presence of plaintiff, due to lack of notice, especially when there exists an "Imbalance of Power" between parties and when the constitutional right to a jury trial has already been established by a previous judge. Summary judgments should not be allowed on issues already ruled upon, especially when no new evidence regarding that issue has been presented. Such

districts should avoid putting new associate judges in positions of being "hatchet judges" to dismiss cases, thus avoiding politically unattractive decisions for the circuit judges, creating a work load that is impossible to handle justly, and providing the opportunity for "one injustice deserves another." Likewise, appellate judges should be overtly involved in the cases from the district that elected them, rather than politically "playing it safe" by withdrawing from the case. Appellate decisions should do more that repeat Facts uttered by the defense which are in themselves inaccurate. The defense has gone to great lengths to utilize words such as "undisputed and purposely" incorrectly. Such districts should, also, require that cases in a particular county be tried in that county unless venue out of that county be granted by a court order. This should be done so playing "keep away" does not occur with plaintiff's file and there is no shifting of responsibility of what county or who has that file, especially at crucial filing times. Districts

should, also, not allow the files of cases involving county political figures to be housed in their county of office.

6. It is of importance to the State of Illinois that either the 1904 "Daum v. Cooper Law" be enforced or a new one made to protect the citizens of this state from the unlawful rechannelization that robs them of their waterways on their land and cause subsequent flooding downstream back on their lands, if such waterway or creek reenters their land. The people further downstream should be protected from such illegal practices.

7. Fraudulent evidentiary materials in the Record on Appeal consist of INCORRECT AFFIDAVIT (R. C. 45-46) AND CORRECTED AFFIDAVIT (R. C138-139). (N.B. The corrected affidavit was found in counsel's file unsigned.) Proof that it was used by the defense counsel in depositioning plaintiff is on page 63 (Lines 11-18) of Robert Balzer's Deposition.

8. The Appellate Court's decision is in conflict with Supreme Court Rules regarding discovery

depositions used as evidence; specifically Supreme Court Rule 212(c) if only a part of the deposition is read or used the opposing party has a right to insist that all of it is read or used. Also, under Supreme Court Rule 201(i), disclosure of any matter obrained by discovery may be contradicted by other evidence. Denial of a Trial by Jury has suppressed that evidence.

9. The Appellate Court, 2nd District, has placed in conflict the ruling from the Appellate Court of Illinois, Third District in Eisenbrandt v. Finnegan, 509 N.E.2d 1037 (Ill.App.3 Dist. 1987). Also, in conflict from the 4th District are Colwell Systems, Inc. v. Henson, 452 N.E.2d 889 (Ill.App. 4 Dist. 1983 and Klimek v. Hitch , 80 Ill.Dec. 289, 464 N.E.2d 1272 (Ill.App. 4 Dist. 1984).

10. Under Res Ipsa Loquitur the argument that somehow plaintiff is to blame for the rechannelization, e.g. he only gave three reasons for not giving permission to his phone callers instead of a dozen, or he should have gone to that meeting to see what the defendants were up to just

does not "hold water."

STATEMENT OF FACTS:

This is a case whereby plaintiffs, absentee landowners, brought action against a corporation and adjacent landowners in trespass for creek hi-jacking and subsequent flooding back on their property downstream. (R. C1-3). This work, done by K-B Farms Corporation and President of Boone County Board et. al, was done knowingly by their own admission (Defendants' Depositions) without both state and federal permits, though such permits are required for any work to be done on Beaver Creek, which is a federal creek. Plaintiff argues that without the permits and the necessary Public Hearing her and her family's constitutional rights of Equal Protection under the 14th Amendment were violated; likewise, state drainage laws, and local, state and federal environmental laws were violated.

Plaintiff, also, states that she and her family were denied DUE PROCESS OF LAW whereby plaintiffs case was terminated by summary judgment,

Reconsideration of Motion For Summary Judgment.

In that motion the defense concedes that the consent issue has already been dealt with:
"Although the Court has previously ruled that there is a general issue of material fact as to whether or not the plaintiffs, Robert and Joyce Balzer ('the Balzers"), consented to the trespass upon their property, the Court did not specifically address the additional issue raised by the original motion for summary judgment, which was whether or not the Balzers had any viable claim for damages." (R. C104).

Now, what intervening event or additional evidence came into play? The ONLY difference reflected in the Record is that the defense filed a "REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENT" (R. C93-95), filed 3/1 89. This document consisted of two exhibits:
Exhibit A: A letter written by Plaintiff Joyce Balzer refusing permission to direct water back

into hi-jacked creek because the drainage ditch was less that 15 ft. from the new established channel. Plaintiffs had been warned by hydraulic technicians about losing their meandering creek over time to the 27 ft. wide x 5 ft. deep x 5,200 ft. long illegally constructed drainage ditch. (R. C96)

Exhibit B: Defense had gone to the Agricultual Stabilization Conservation Service and copied Plaintiff's Crop Land Acreage for the years 1979 (cropland totals preceding the Fall, 1979 Rechannelization; 1982; and 1987.) (R. C97-101) Now, anyone who is familiar at all with those records knows that every farmer's land is divided into fields and the acreage of each field is calculated separately. However, the defense only read the top cropland total for the above years and jumped to the erroneous conclusion that Balzer did not lose acreage but gained it, when the gain did not apply to the 10-year flooded, dormant area but to gains in other fields.

So, essentially the defense's "undisputed" charge that plaintiffs failed to mitigate damages and

though material fact existed on both isssues of consent and damages and should have proceeded to Trial by Jury as requested in timely fashion. (R. C3-4).

Court ordered, 5/15/86, that the Original Complaint be amended to delete the name of K-B Farms Director, Robert Funderburg, (R. C 34); K-B Farms Corporation was retained as defendant. After case went on slaughter call for lack of action and having information that because of who the defendants were, "This case would never come to trial" Plaintiff Joyce Balzer and children picketed the court house for one day June, 1987. (Attached).

Amended Complaint (R. 36-38) filed 7/2/87, was not only changed by plaintiffs' counsel deleting Robert Funderburng's name, but the very nature of the complaint was fraudently changed by own counsel from the true nature of Rechannelization to Channelization.

Motions for Summary Judgments.

Order Denying Summary Judgment II to defendants (R. C107):

Essentially in this Order Associate Judge Peterson said that the defendants have not met the burden whereby: "Summary judgment should be granted only when the party's right to it is clear and free from doubt."

Also, in May, 1988, the following events occurred:

1. Plaintiffs began receiving a computerized billing for $4475. (attached) from counsel, though the case had been taken on contingency for 1/3.
2. Plaintiffs called counsel and set up an appointment to discuss finances.
3. At that meeting counsel said another lawyer had become involved in the case who represented K-B Farms' insurance liability policy. He said this lawyer was saying, You knew about this claim for a long time. Rather than get into a long litigation of declaratory judgment the insurance company was willing to throw some money into the pot. Counsel

then said plaintiffs could bow out and be even attorney fees. Plaintiffs refused. Counsel then said well this case either has to go to trial or settlement. He said he would sit down with the other attorneys and judge and talk about it.

4. The $4475. computerized billing started up again and lasted until May, 1989, when the case was secretly dismissed without notice to plaintiffs.

5. From May, 1988 to 1989 Plaintiff showed up at (2) announced Pre-Trial Conferences, only to find that the Pre-Trial had been cancelled, though it was still on the roster outside the courtroom.

In May, 1989, the record reflects that a Notice (R. C103) dated 5/5/89, (filed 5/8/89), not sent to plaintiffs, but (3) attorneys (O'Brien, Kardell and Schuerich) before Judge Peterson was to be May 19th, 1989 at 2:30 in Winnebago Court House; "present a Motion for Reconsideration of Motion for Summary Judgment and in addition for a pretrial conference previously requested by the plaintiffs." Filed, also, on May 8, 1989 was the Motion For

NO. 70317

IN THE ILLINOIS SUPREME COURT
FROM THE SECOND JUDICIAL DISTRICT
NO. 2-89-0898

JOYCE BALZER	)
	) Appeal from
the Circuit Court	)
	) of Boone
County	
PLAINTIFF-APPELLANT	)
	)
VS.	) CIRCUIT COURT
NO. 84 L 43	)
	)
DONALD MEIER, JAMES BOOK,	)
K-B FARMS, INC., AND	)
ROBERT H. FRIEL	) TRIAL JUDGE:
JUDGE CRAIG PETERSON	)
	)
DEFENDANTS-APPELLEES	)
	)

MOTION FOR LEAVE TO SUPPLEMENT
PETITION FOR LEAVE TO APPEAL

Petitioner Joyce Balzer, pro se, hereby requests the Supreme Court of the State of Illinois to admit the attached addendum to be considered with the Petition For Leave To Appeal.

Several points contained therein consist of the following facts:

1) Error of dismissal date in the Petition;

2) Violation of Property Rights of Plaintiff;

65

3) Matter of Rockford Mutual Insurance Company's business practices being of concern to the "Public Interest" of the the State of Illinois

Respectfully submitted,

Joyce BalzerPlaintiff-Petitioner pro se

Joyce Balzer
1302 Coolidge Pl.
Rockford, IL 61107

STATE OF ILLINOIS
SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD 62706

September 19, 1990

Ms. Joyce Balzer

1302 Coolidge Place

Rockford, Illinois 61107

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 70317 - Joyce Balzer, petitioner, v Donald Meier, et al., respondents

Motion by petitioner, pro se, for leave to supplement the petition for leave to appeal instanter. Motion allowed.

JH:jak

cc: Michael Schuerich

Michael O'Brien